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Pra tili n r's Docket N . 1033.006US1

PATENT



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Delores M. Wright  
 Application No.: 09 / 768,694  
 Filed: 1-24-2001  
 For:

RECEIVED

JUN 08 2001

OFFICE OF PETITIONS

Assistant Commissioner for Patents  
 Washington, D.C. 20231

**PETITION TO ESTABLISH PRIOR RECEIPT IN THE P.T.O. OF ITEM(S)  
 CONSIDERED AS OMITTED BY THE P.T.O.—RESPONSE TO**  
 "NOTICE OF OMITTED ITEMS"  
 "NOTICE OF INCOMPLETE APPLICATION"

## NONPROVISIONAL APPLICATION

**NOTE:** "The Office of Initial Patent Examination (OIPE) reviews application papers to determine whether all of the pages of specification are present in the application. If the application is filed without all of the page(s) of the specification, but containing something that can be construed as a written description, at least one drawing figure, if necessary under 35 U.S.C. 113 (first sentence), and, in a nonprovisional application, at least one claim, OIPE will mail a "Notice of Omitted Items" indicating that the application papers so deposited have been accorded a filing date, but are lacking some page(s) of the specification." MPEP, § 601.01(d), 7th Edition.

**WARNING:** This submission must be "within two months of the date of the 'Notice of Omitted Items' (37 C.F.R. 1.181(f))." Notice of June 5, 1996, 61 Fed. Reg. 30,041, 30,041 (Jun. 5, 1996). See also § 601.01(d), MPEP, 7th Edition. "As an applicant may, but is not required, to reply to such a 'Notice of Omitted Items,' extensions of time under 37 CFR 1.136 will *not* be applicable to this 2-month period."

Adjustment date: 01/24/2002 AKEL (emphasis in original).  
 06/08/2001 GTEFFERA 00000013 09768694  
 01 FC:122 -130.00 OP

Refund Ref:  
 01/24/2002

0030006767

**CERTIFICATION UNDER 37 C.F.R. § 1.10\***  
 (Express Mail label number is mandatory.)  
 (Express Mail certification is optional.)

Credit Card Refund Total: \$130.00

I hereby certify that this correspondence and the documents referred to as attached therein are being deposited with the United States Postal Service on this date June 5, 2001, in an envelope as "Express Mail" (Post Office to Addressee," mailing Label Number EF345847284US, addressed to the:  
 Am Exp.: XXXXXXXX Assistant Commissioner for Patents, Washington, D.C. 20231.

06/08/2001 GTEFFERA 00000012 09768694

01 FC:122 130.00 OP

Michael Dryja

(type or print name of person mailing paper)

Signature of person mailing paper

**WARNING:** Certificate of mailing (first class) or facsimile transmission procedures of 37 C.F.R. § 1.8 cannot be used to obtain a date of mailing or transmission for this correspondence.

**WARNING:** Each paper or fee filed by "Express Mail" must have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. § 1.10(b).

"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will not be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

(Petition to Establish Prior Receipt in the P.T.O. of Item(s) Considered as Omitted by the P.T.O.—Response to

"Notice of Omitted Items"  "Notice of Incomplete Application"—Nonprovisional Application [5-11]  
 —page 1 of 4)

06/08/2001 GTEFFERA 00000012 09768694

GPO:2001 OCP

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 JUN 14 2001  
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UNITED STATES PATENT & TRADEMARK OFFICE  
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: <u>1/16/02</u>	2 Serial/Patent # <u>09/768,694</u>
3 Please refund the following fee(s):	
Filing	4 PAPER NUMBER
Amendment	5 DATE FILED
Extension of Time	6 AMOUNT
Notice of Appeal/Appeal	\$
Petition	4 <u>1/5/01</u> \$ <u>130.00</u>
Issue	\$
Cert of Correction/Terminal Disc.	\$
Maintenance	\$
Assignment	\$
Other	\$
7 TOTAL AMOUNT OF REFUND <u>\$ 130.00</u>	
8 TO BE REFUNDED BY <u>C Card</u>	
10 REASON:	<input checked="" type="checkbox"/> Treasury Check
Overpayment	<input type="checkbox"/> Credit Deposit A/C #:
<input checked="" type="checkbox"/> Duplicate Payment	9 <u>      </u> -- <u>      </u> <u>      </u> <u>      </u> <u>      </u>
No Fee Due (Explanation):	
11 REFUND REQUESTED BY:	
TYPED/PRINTED NAME: <u>E. Shirene Willis</u>	
SIGNATURE: <u>E. Shirene Willis</u>	
OFFICE: <u>Office of Petitions</u>	
***** THIS SPACE RESERVED FOR FINANCE USE ONLY *****	
APPROVED: <u>Alma Kelley</u>	DATE: <u>1-24-02</u>

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to:

Office of Finance  
Refund Branch  
Crystal Park One, Room 802B

**NOTE:** "While an applicant willing to accept a nonprovisional application as deposited in the PTO need not respond to the 'Notice of Omitted Items,' the filing of an express communication to that effect would permit the PTO to proceed with the processing of the application for examination, and, as such, may reduce the delay in the examination of the application. The failure to file a petition under 37 C.F.R. section § 1.53(c) or 1.182 (and the required petition fee) within 2 months of the 'Notice of Omitted Items' will be treated as a constructive acceptance by applicant of the application as deposited in the P.T.O. "Notice of Jun. 5, 1996, 61 Fed. Reg. 30,041, 30,046.; M.P.E.P. § 601.01(d), 7th ed.

**NOTE:** "An applicant desiring to submit the omitted page(s) in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted page(s) with an oath or declaration in compliance with 37 section 1.63 and 1.64 referring to such page(s) and a petition under 37 section 1.182 (with the petition fee under 37 section 1.17(h)) requesting the later filing date within two months of the date of the Notice of Omitted Items" (37 section 1.181(f))." Notice of Jun. 5, 1996, 61 Fed. Reg. 30,041, 30,041. See § 601.01(d), MPEP, 7th Edition.

**NOTE:** "...in view of the relatively low filing fee for provisional applications, and the PTO's desire to minimize the processing of provisional applications, the PTO will not grant petitions under 37 section 1.182 to accept omitted page(s) or drawing(s) and accord an application filing date as of the date of such submission. Instead, the applicant should simply refile the complete provisional application." Notice of Jun. 5, 1996, 61 Fed. Reg. 30,041-30,046, at 30,044. See § 601.01(d), MPEP, 7th Edition.

**1.** This is in response to the

"NOTICE OF OMITTED ITEMS"  
 "NOTICE OF INCOMPLETE APPLICATION

mailed for this application on 4/11/2001

A copy of the  
 "NOTICE OF OMITTED ITEMS"  
 "NOTICE OF INCOMPLETE APPLICATION

is enclosed.

**2.** Applicant asserts that the items indicated as omitted were in fact deposited with the P.T.O. with the original application papers filed on 1/24/01.

**3.** In accordance with the requirements of the Notice of June 5, 1996, 61 Fed. Reg. 30,041-30,046, (see MPEP, § 601.01(d), 7th Edition) applicant hereby:

A. Petitions under 37 section 1.53(e) for a review of the determination that the items in issue were omitted;  
B. Submits the petition fee under 37 section 1.17(j) and  
C. Submits the attached evidence of the deposit of the items in issue.

**4.** Fee Payment

Attached is a  check  money order in the amount of \$130.00  
 Authorization is hereby made to charge the amount of \$130.00  
 to Deposit Account No. \_\_\_\_\_  
 to Credit card as shown on the attached credit card information authorization form PTO-2038

**WARNING:** Credit card information should not be included on this form as it may become public.

Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

(Petition to Establish Prior Receipt in the P.T.O. of Item(s) Considered as Omitted by the P.T.O.—Response to  
 "Notice of Omitted Items"  "Notice of Incomplete Application"—Nonprovisional Application [5-11]  
—page 2 of 4)

5. Request for Refund For Petition Fee Under 37 CFR 1.53(e)

NOTE: "The petition fee will be refunded if it is determined that the page(s) was in fact received by the PTO with the application papers deposited on filing." MPEP, § 601.01(d), 7th Edition.

It is respectfully requested that, upon grant of the petition under 37 section 1.53(e), the petition fee be refunded by:

- a refund check
- a credit to the charge authorized above

6. Provisional Request for Filing Date As of This Date of Submission of Omitted Items in Issue—Provisional Petition under 37 section 1.182.

In the event that the Petition to Establish Prior Receipt in the P.T.O. of Omitted Items in Issue does not result in a decision by the P.T.O. that the omitted items in issue were indeed received by the P.T.O. on the original filing date for this application, applicant hereby:

- (a) submits the omitted item(s) listed on the
  - "NOTICE OF OMITTED ITEMS"
  - "NOTICE OF INCOMPLETE APPLICATION;"
- (b) submits a declaration in compliance with 37 section 1.63 and 1.64 referring to such omitted item(s);
- (c) petitions under 37 section 1.182 to accept the date of this submission as the application filing date; and
- (d) submits the petition fee under 37 section 1.17(h).

7. Petition Fee for Provisional Petition under 37 section 1.182

The fee under 37 section 1.17(h) is paid as follows:

- Attached is a  check  money order in the amount of \$130.00
- Authorization is hereby made to charge the amount of \$130.00
  - to Deposit Account No. \_\_\_\_\_
  - to Credit card as shown on the attached credit card information authorization form PTO-2038

**WARNING:** Credit card information should not be included on this form as it may become public.

- Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

(Petition to Establish Prior Receipt in the P.T.O. of Item(s) Considered as Omitted by the P.T.O.—Response to

"Notice of Omitted Items"  "Notice of Incomplete Application"—Nonprovisional Application [5-11]  
—page 3 of 4)

8. Request for Refund of Provisional Petition Fee under 37 section 1.182

Upon grant of the petition under 37 section 1.53(e) and the determination by the P.T.O. that the omitted items in issue were filed with the original papers filed for this application, applicant respectfully requests that the petition fee under 37 section 1.182 be refunded by:

- a refund check
- a credit to the charge authorized above

Reg. No.:39,662



**SIGNATURE OF PRACTITIONER**

Michael Dryja

*(type or print name of practitioner)*

704 228th Ave NE #694

P.O. Address

Sammamish, WA 98074

- Plus EVIDENCE OF DEPOSIT OF ITEM(S) WITH APPLICATION INDICATED AS OMITTED IN THE  "NOTICE OF OMITTED ITEMS"  "NOTICE OF INCOMPLETE APPLICATION" —NONPROVISIONAL APPLICATION

(Petition to Establish Prior Receipt in the P.T.O. of Item(s) Considered as Omitted by the P.T.O.—Response to  
 "Notice of Omitted Items"  "Notice of Incomplete Application"—Nonprovisional Application [5-11]  
—page 4 of 4)

Pratiliner Docket N. 1033.006US1



**EVIDENCE OF DEPOSIT OF ITEM(S)  
WITH APPLICATION INDICATED AS OMITTED IN THE**

"NOTICE OF OMITTED ITEMS"  
 **NOTICE OF INCOMPLETE APPLICATION**  
—NONPROVISIONAL APPLICATION

**RECEIVED**

JUN 08 2001

**OFFICE OF PETITIONS**

In connection with the

"NOTICE OF OMITTED ITEMS"  
 "NOTICE OF INCOMPLETE APPLICATION"

dated 4/11/2001, applicant submits the following evidence that the item(s) indicated as omitted were in fact deposited with the P.T.O. on 4/11/2001, which is the original date on which the papers for this application were deposited:

a photocopy of the date stamped return post card receipt showing thereon that the item(s) indicated as omitted were in fact deposited. (See MPEP, § 503, 7th Edition).  
 other:

Please see following pages.

**Argument made in substantiation of Evidence of Deposit of Item(s) with Application**  
**Indicated as Omitted in the Notice of Incomplete Non-Provisional Application**

Applicant notes that the USPTO mailed, on April 11, 2001, a Notice of Incomplete Nonprovisional Application, in which it is asserted that the specification does not include at least one claim, and that the abstract must be on a separate sheet.

Applicant notes that the USPTO implicitly acknowledges the receipt of the abstract, inasmuch as the USPTO has indicated to the Applicant that the abstract must be on a separate sheet.

However, Applicant respectfully asserts that the claims asserted as missing by the USPTO are on the same sheet on which the abstract is, specifically the last page of the originally filed application. A copy of this sheet is attached towards the end of this document, and is indicated as ‘COPY,’ since it is a copy of the last page of the application as was originally filed. Because the USPTO has implicitly acknowledged that the abstract was in fact present with the originally filing of the application, it cannot also claim that the claims were missing.

More specifically, eight claims are presented beginning and ending on this last page of the application, the first two of which are independent claims, and the last six of which are dependent claims. Claims 1 and 2 are method claims. Claim 1 recites “a method that allows a person to store . . .,” whereas claim 2 recites “a method that enables a person to build . . .”

Applicant provisionally admits that the claims presented are not in the usual form submitted to the USPTO, and that they are not led by a preamble such as “I claim,” as is usual practice. However, Applicant avers that neither of these deficiencies is legal grounds for denying Applicant her filing date on the basis that at least one claim must be included with the originally filed application.

As to the first point, that the claims presented are not in the usual form, Applicant notes that the MPEP states that “there is no set statutory form for claims.” Section 608.01(m). Indeed, aspects of the customary form of claims presented in the MPEP are satisfied by the originally filed claims. For instance, as per the MPEP’s guidance, “[e]ach claim begins with a capital letter and ends with a period.” Id. Furthermore, “[p]eriods may not be used elsewhere in the claims except for abbreviations.” Id.

As to the second point, that the claims are not led by a preamble such as “I claim,” Applicant notes that the MPEP itself implicitly indicates that this deficiency does not affect the substantiveness of the claims, in as much as the MPEP indicates that “[i]f, at the time of allowance, the quoted terminology is not present, it is inserted by the clerk.” Section 608.01(m).

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Argument as to Evidence of Deposit of Items  
serial no. 09/768,694

Finally, Applicant acknowledges that the abstract is not on a separate page, and to that end, submits two pages at the end of this document, one separately for the claims, and one separately for the abstract.

In summary, Applicant asserts that the USPTO is mistaken in its assertion that claims were not included with the originally filed application. The USPTO implicitly admitted that an abstract was included with the originally filed application, but that it did not begin on a separate page. Because the page it was included on in the originally filed application also includes the claims as described above, Applicant respectfully submits that the USPTO has implicitly admitted that claims were in fact included with the originally filed application.

Should any further questions arise as to this matter, please call Applicant's Representative, the phone number of whom is listed below.

 6-4-01

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Representative for Applicant  
Michael Dryja, Reg. No. 39,662  
Law Offices of Michael Dryja  
704 228<sup>th</sup> Ave NE #694  
Sammamish, WA 98074  
tel: 425-427-5094  
fax: 206-374-2819

1. *The Flexible, Orienting, and Better Shopping Wallet for Netizens* is a method that allows a person to store her wallet on a specified Internet server or else to store her wallet on that Internet access device or on a portable medium while maintaining complete version control.
2. *The Flexible, Orienting, and Better Shopping Wallet for Netizens* is a method that enables a person to build her order and delivery instructions within a wallet on her Internet access device while retrieving data from various servers and then supply them to a server..
3. In addition to (3) the said data can be recorded in said person's wallet.
4. In addition to (3) said person can select a journey duration for each item.
5. In addition to (3) said order can be divided by said wallet according to destination, dispatch delay, and journey duration of each item in said order.
6. In addition to (3) said wallet obtains carriage costs and sales tax from a server based on journey durations and maximum volume and weight allowed.
7. In addition to (6) said wallet determines by reference to said server any import duty payable by reference to destination and fulfillment depot of each said item.
8. In addition to (7) said wallet arranges for said duty to be paid automatically when said items arrive at country of destination.